

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 ACDA-07 AGR-05 AID-05 CEA-01

CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DODE-00 DOTE-00

EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

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C O N F I D E N T I A L USUN 3474

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 25

1. INFORMAL PLENARY AUGUST 25 COMPLETED DISCUSSION OF
ARTICLE 18, PARAGRAPH 1, RELATING TO DISPUTES CONCERNING
SOVEREIGN AND EXCLUSIVE RIGHTS.

2. BRAZIL, TONGA, AND LIBYA SUPPORTED MADAGASCAR AND
INDIA PROPOSALS TO DELETE ALL THE SUBPARAGRAPHS WHICH
WOULD SUBMIT TO DISPUTE SETTLEMENT DISPUTES RELATING TO
NAVIGATION, OVERFLIGHT, AND ENVIRONMENT. IRAG AND
YUGOSLAVIA SUPPORTED THE LESS DRASTIC MEXICAN PROPOSAL
TO DELETE REFERENCE TO DISPUTE SETTLEMENT WITH RESPECT
TO RIGHTS OF OTHER STATES IN ECONOMIC ZONE. ON THE
OTHER HAND, IRAN, IRAQ, AND BAHRAIN SUPPORTED THE
OMISSION OF RESTRICTIONS ON DISPUTE SETTLEMENT RESULTING
FROM LIMITING IT TO "SUBSTANTIVE RIGHTS SPECIFICALLY
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ESTABLISHED." DENMARK, FINLAND, IRELAND, AND KOREA

SUPPORTED THE COMPROMISE NETHERLANDS PROPOSAL TO EXEMPT DISPUTES RELATING TO THE TERRITORIAL SEA, ECONOMIC ZONE, AND CONTINENTAL SHELF, WITH FOUR BROAD EXECPTIONS ALLOWING SETTLEMENT, FOR INSTANCE, IN CASE OF ABUSE OF POWER.

3. THE USSR SUGGESTED SEVERAL SMALL CHANGES, SUPPORTED US PROPOSAL ON FISHERIES, AND SUGGESTED ADDITION OF SUBPARAGRAPH ON CLAIMS THAT A COASTAL STATE HAS UNDULY INTERFERED WITH THE EXERCISE OF RIGHTS GRANTED TO OTHER PARTIES UNDER THE CONVENTION. CHINA STATED THAT ALL DISPUTES SHOULD BE SETTLED BY NEGOTIATIONS AND CONSULTATIONS, THAT PART IV SHOULD NOT APPLY TO ECONOMIC ZONE AND CONTINENTAL SHELF, AND THAT IF OTHER COUNTRIES INSIST ON DISPUTE SETTLEMENT PROVISIONS, THEY SHOULD BE PUT INTO A SEPARATE OPTIONAL PROTOCOL.

4. GHANA NOTED THAT IT HAS NOT ACCEPTED THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE, AND THAT IT MIGHT NOT BE ABLE TO ACCEPT ANY COMPULSORY JURISDICTION UNDER LOS CONVENTION. IN ANY CASE IT WOULD OPPOSE ANY ATTEMPTS TO USE ARTICLE 18 TO CHANGE THE CHARACTER OF THE ECONOMIC ZONE. IT OBJECTED ALSO TO INCLUSION OF TERRITORIAL SEA IN THE NETHERLANDS PROPOSAL, AS PART IV SHOULD NOT APPLY TO TERRITORIAL SEA.

5. AUSTRALIA COMMENTED ON THE PROPOSED INCLUSION OF REFERENCES TO TERRITORIAL SEA OR SOVEREIGNTY IN THE CHAPEAU OF PARAGRAPH 1 OF ARTICLE 18, AND ARGUED THAT "FREEDOM OF NAVIGATION" MAY NOT INCLUDE "INNOCENT PASSAGE" OR "TRANSIT" THROUGH THE TERRITORIAL SEA, STRAITS OR ARCHIPELAGIC WATERS. MALAYSIA ALSO NOTED THE SPECIAL PROBLEM OF STRAITS, AND EMPHASIZED THE NEED TO RETAIN SUBPARAGRAPH (B) WHICH ALLOWS COASTAL STATES TO SUE OTHER STATES WHICH VIOLATE STRAITS PROVISIONS. TURKEY INSISTED THAT NO DISPUTE RELATING TO STRAITS CAN BE SUBJECT TO INTERNATIONAL ADJUDICATION, AS THIS IS A MATTER WITHIN THE DOMESTIC OR EXCLUSIVE JURISDICTION OF A COASTAL STATE. IT ALSO POINTED OUT

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THAT STRAITS REGIMES ESTABLISHED PRIOR TO LOS CONVENTION CANNOT BE SUBJECT TO IT.

6. THE UK EMPHASIZED NEED TO EXHAUST LOCAL REMEDIES, NONINTERFERENCE WITH DISCRETION OF COASTAL STATE, PROTECTION OF DOMESTIC JURISDICTION, CLOSE RELATIONSHIP BETWEEN PARTS II AND IV, AND POSSIBILITY OF ADJUSTING ARTICLE 10 TO COVER EXEMPTION OF ECONOMIC ZONE ISSUES.

HE SUGGESTED ESTABLISHMENT OF WORKING GROUP TO CONSIDER PROPOSED AMENDMENTS TO ARTICLE 18. THIS SUGGESTION WAS SUPPORTED BY CANADA, AUSTRALIA, AND FINLAND, BUT OPPOSED BY TUNISIA ON GROUND THAT SUCH GROUP WOULD INTERFERE WITH WORK OF PARALLEL GROUP IN COMMITTEE II DEALING WITH STATUS OF ECONOMIC ZONE.

7. CANADA, WHILE IN PRINCIPLE SUPPORTING CDS, SUPPORTED PROPOSALS TO PROTECT RIGHTS OF COASTAL STATE. IT SUGGESTED ADDITION OF "JURISDICTION" TO CHAPEAU OF PARAGRAPH 1 IN ORDER TO PROTECT ENVIRONMENT OF COASTAL STATE (AS ARTICLE 44 OF PART II LISTS ENVIRONMENT UNDER "JURISDICTION" OF COASTAL STATE, AS DISTINGUISHED FROM "EXCLUSIVE JURISDICTION"). THE ENVIRONMENTAL PROVISION IN SUBPARAGRAPH (C) OF 18 (1) SHOULD APPLY NOT ONLY TO COASTAL STATE BUT ALSO TO OTHER STATES, WHO SHOULD BE ALSO ACCOUNTABLE FOR VIOLATING ENVIRONMENTAL STANDARDS. INTERNATIONAL ADJUDICATION, IN GENERAL, SHOULD BE PERMITTED ONLY WITH RESPECT TO "EXERCISE OF RIGHTS" NOT RIGHTS THEMSELVES, AS OTHERWISE COASTAL STATE WILL BE SUBJECT TO EVERLASTING LITIGATION.
END
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